Supreme Court, U.S.
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No. 09-1465

In The

Supreme Court of the United States

JAMES R. PIPES,

Petitioner,

v.

UNITED PARCEL SERVICE, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. In a case alleging that the employer violated 29 U.S.C. § 185 by terminating the employee in violation of the collective bargaining agreement (hereinafter "CBA") and that the Petitioner's international union violated the duty of fair representation, what is the nature and extent of the district court's and jury's roles in connection with the application, interpretation, and enforcement of the CBA where a joint grievance committee had previously interpreted the CBA, but the Petitioner has offered admissible summary judgment evidence from the text of the CBA and from union officials that shows that the joint grievance committee's interpretation is inconsistent with, and violative of, the express provisions of the CBA and the employer's evidence shows that this interpretation is based on policy reasons?

II. Does an international union, which appoints the union-side member of a joint grievance committee, owe a duty of fair representation to a grievant-employee in connection with the processing and determination of his grievance where the union-side committee member's determination is dispositive of the grievant's right to proceed to arbitration before an independent arbitrator appointed by the Federal Mediation and Conciliation Service, where the international union is not a direct signatory to the collective bargaining agreement, but the CBA is negotiated and signed by agents of the international union

QUESTIONS PRESENTED – Continued

and the grievance procedure in question is an integral part of the international union's national grievance machinery?

III. If the international union does owe a duty of fair representation in this situation, does a Plaintiff set forth genuine issues of material fact for trial where the Plaintiff has submitted admissible summary judgment evidence which shows that:

A. The union-side member of the joint grievance committee's determination of the grievance is premised on an interpretation of the CBA that is in violation of the express terms of the CBA;

B. This determination is based on policy reasons;

C. The grievance is meritorious; and

D. The union-side member's determination effectively blocked the grievant's rights under the CBA to an impartial arbitration before an arbitrator appointed by the Federal Mediation and Conciliation Service?

PARTIES TO THE PROCEEDINGS BELOW

The Petitioner in this case is James R. Pipes, represented by J. Arthur Smith, III, SMITH LAW FIRM, 830 North Street, Baton Rouge, Louisiana 70802.

The Respondents in this case are:

United Parcel Service, Inc. represented by Dennis M. McClelland, PHELPS DUNBAR LLP, 100 South Ashley Drive, Suite 1900, Tampa, Florida 33602, and Michelle F. Plauche and Susan W. Furr, PHELPS DUNBAR LLP, II City Plaza, Suite 1100, 400 Convention Street, Baton Rouge, Louisiana 70802; and

International Brotherhood of Teamsters, represented by G. William Baab, BAAB & DENISON, L.L.P., 2777 North Stemmons Freeway, Suite 1100, Dallas, Texas 75207, and Louis L. Robein, Jr., ROBEIN, URANN, SPENCER, PICARD & CANGEMI, APLC, 2540 Severn Avenue, Suite 400, Metairie, Louisiana 70002.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, James R. Pipes, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The March 2, 2010 judgment of the United States Court of Appeals for the Fifth Circuit is set forth at App. 3 of the Appendix. The June 16, 2009 ruling of the district court is set forth at App. 5

JURISDICTION

The judgment of the Court of Appeals was entered on March 2, 2010. The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

The relevant provision of 29 U.S.C. § 185(a) is reproduced in the Appendix to this Petition.

STATEMENT

This is an action arising out of the termination of the Petitioner's employment as a United Parcel

Service (hereinafter "UPS") package truck driver. The Petitioner contends that his termination violated the collective bargaining agreement ("CBA") and that the International Brotherhood of Teamsters (hereinafter "IBT"), acting by and through its appointee on a joint grievance committee, violated its duty of fair representation.

This petition also involves the application and implications of the portion of this Court's decision in *14 Penn Plaza, LLC v. Pyett*, 129 S.Ct. 1456 (2009), in which this Court held that the duty of fair representation "is the avenue that Congress made available to redress a union's violation of its duty to its members" in context of contract administration and enforcement efforts. (*Id.* at 1473).

On April 16, 2007, James R. Pipes (hereinafter "Pipes") was involved in an accident in an UPS truck,[1] while driving on a country road. Pipes testified in deposition that when he got to the top of a hill he heard a popping sound. The sound apparently came from the steering arm of the truck or the right front tire. Pipes stated that "the vehicle immediately pulled me off the road to the right." Pipes also stated that the right tire was the first part of the truck to leave the paved portion of the road and that it pulled both the front and back wheels off the road. Since there was no traffic in the roadway, and to avoid striking

[1] The truck Pipes was driving at the time of the accident was over 20 years old and had been driven in excess of 218,000 miles.

head-on a row of pine trees, Pipes decided to try to maneuver the vehicle back onto the road. When he attempted to steer the vehicle back onto the road, the rear-end of the vehicle immediately came around counter clockwise. At that point, the truck was out of control, so Pipes applied the brakes. When he did, the truck slid across the road and down into a ditch on the left side of the road. After the truck came to a final stopping place, Pipes observed that the right front tire was deflated. This observation was subsequently confirmed by other UPS personnel who arrived at the scene.

Pipes testified that he was not drinking or eating while driving, was not in a hurry, was not talking on his cell phone, and was not doing anything out of the ordinary. Pipes also testified that he was not at fault or reckless in any way in connection with the accident and was not speeding. He stated that "it was something that happened that was completely out of my control."

Pipes stated that the old UPS truck he was driving was top heavy and "if you lose a tire, it's going to take off." He also stated that while he did a pre-trip inspection of the tire, all that the UPS drivers could do in the pre-trip inspections was to kick the tires because they were not provided air gauges. He explained that it is difficult to tell when the tires are low on these old trucks because the tires on them are retreads and are "very hard." He added that these tires have to be almost flat to tell when these tires are very low.

The CBA under which Pipes was employed provides that an employee can only be terminated for "just cause." Specifically, Pipes was terminated for alleged "recklessness in causing a serious accident." The term "serious accident" is expressly defined in the CBA as one in which the employee receives a citation. *See* App. 31. The accident was investigated by the local sheriff's office and Pipes did not receive a citation.

Pipes contends UPS' accusation of recklessness is untrue.

Pipes' local union filed a grievance on his behalf. The local union, Teamsters Local No. 568, investigated the grievance and concluded that it was meritorious. However, the local union was unable to resolve the grievance locally and the national grievance machinery was invoked. The grievance came before a regional joint grievance committee and then before a joint deadlock committee. These committees were composed of an equal number of company and union representatives. The regional joint grievance committee deadlocked along company/union lines. However, the international union's representative on the deadlock committee acquiesed in UPS' position and voted to sustain Pipes' termination, thus effectively blocking the grievance from being presented to an independent arbitrator appointed by the Federal Mediation and Conciliation Service by operation of the CBA.

Pipes filed suit contending that UPS terminated him in violation of the CBA and that the International

Brotherhood of Teamsters (hereafter "IBT") joined in this violation and, thus, by its arbitrary conduct, failed to enforce the CBA and violated its duty of fair representation.

Both Defendants filed motions for summary judgment. On June 16, 2009, the district court found "no genuine issue of material fact to support Pipes' claim against the union" and granted IBT's Motion for Summary Judgment. The court also granted UPS' Motion for Summary Judgment, and dismissed Pipes' 29 U.S.C. § 185(a) claim against UPS without reaching its merits of the termination.

On March 2, 2010, the United States Court of Appeals for the Fifth Circuit affirmed in a brief decision, " ... For essentially the same reasons set forth in the District Court ruling entered on June 16, 2009." This timely petition for certiorari followed.

REASONS FOR GRANTING THE WRIT

The Court of Appeals has decided important questions of federal labor law that have not been, but should be, decided by this Court.

In *14 Penn Plaza, LLC v. Pyett*, *supra*, this Court held that the duty of fair representation applies to challenges leveled at a union's contract administration and enforcement efforts. (*Id.* at 1473).

This case presents an opportunity for this Court to establish the nature and extent of an international

union's duty of fair representation, if any, in the context of a joint grievance committee's determination of grievances where the employee's grievance has been found to be meritorious by both the local union, which investigated the grievance and prosecuted it up to the deadlock committee, and all union-side members of the first level regional grievance committee.

A. This Court Should Decide the Important Question of Federal Law Which Has Not, But Should Be, Decided by This Court, as to the Role of the Court and Jury, as Opposed to a Joint Grievance Committee in Interpreting, Applying, and Enforcing a Collective Bargaining Agreement in an Action Alleging a Statutory Claim Under 29 U.S.C. § 185(a).

Statutory Claims Under 29 U.S.C. § 185(a) Are an Integral Part of Federal Labor Law and a Coherent National Labor Relations Policy.

James Pipes is asserting a statutory claim arising under 29 U.S.C. § 185(a) (§ 301 of the Labor Management Relations Act (hereinafter "*LMRA*") of 1947). This is a claim for which Pipes is entitled to trial by jury under the Seventh Amendment to the United States Constitution. *Chauffeurs, Teamsters and Helpers Local No. 391 v. Terry*, 494 U.S. 558 (1990); *Woodell v. International Brotherhood of Electrical Workers*, 502 U.S. 93 (1991).

In enacting § 301 of the Labor Management Relations Act, Congress intended that the United States courts play a significant role in the enforcement of CBAs.

After Congress enacted § 301 in 1947, this Court decided *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448 (1957), in which the Court held:

> Thus, collective bargaining contracts were made "equally binding and enforceable on both parties." ... As stated in the House Report, *supra*, the new provision "makes labor organizations equally responsible with employers for contract violations and provides for suit by either in the U.S. district courts." To repeat, the Senate Report, *supra*, p. 17, summed up the philosophy of section 301 as follows: "Statutory recognition of the collective bargaining agreement as a valid, binding and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements and will thereby promote industrial peace....
>
> The legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can only be obtained in that way." (*Id.* at 454).

In *Price v. International Brotherhood of Teamsters*, 457 F.2d 605 (3rd Cir. 1972), the court succinctly summarized the law dating from the enactment of 29 U.S.C. § 159(c) to the "Steelworkers Trilogy" to *Humphrey v. Moore*, 375 U.S. 335 (1964) and explained how collective bargaining agreements are an integral feature of Congress' statutory purpose to fashion a coherent national labor policy.

In *Allied Oil Workers Union v. Ethyl Corporation*, 341 F.2d 47 (5th Cir. 1965), the Court held:

> Not only does this section [§ 301] confer on the district court jurisdiction over suits for violation of labor agreements, but it creates in each party the substantive right to have this agreement judicially enforced. See *Textile Workers of America v. Lincoln Mills*, 1957, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972. Its purpose is to expand the availability of forums for the enforcement of labor contracts, *Charles Dowd Box Co. v. Courtney*, 1962, 368 U.S. 502, with the ultimate aim of promoting industrial peace.... (*Id.* at 48).

In *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962), this Court held that "The legislative history makes clear that the basic purpose of § 301(a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations." This Court continued:

> The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301(a) reflects Congressional recognition of the vital importance of assuring the enforceability of such agreements. (*Id.* at 509).

There Was No "Clear and Unmistakable" Waiver of James Pipes' Statutory Claims Under 29 U.S.C. § 185(a).

This Court has repeatedly held that a union is without authority to waive an employee's substantive statutory rights in a less-than explicit waiver in a CBA. *See 14 Penn Plaza, LLC v. Pyett*, in which this Court held:

> "Respondents also argue that the CBA operates as a substantive waiver of their ADEA rights because it not only precludes a federal lawsuit, but also allows the Union to block arbitration of these claims...." (*Id.* at 1474). *Alexander v. Garner-Denver Co.*, 415 U.S. 36 (1974) " ... at least stands for the proposition that the right to a federal judicial forum is of sufficient importance to be protected against less-than-explicit union

> waiver in a CBA ... (*Id.* at 1469, FN. 7) today's decision does not contradict the holding of *Garner-Denver*...." (*Id.* at 1469, FN. 8).

In *14 Penn Plaza, LLC v. Pyett*, *supra*, this Court also observed at 1474 that a substantive waiver of statutory rights would be one that not only precluded a federal lawsuit, but allowed the union to block the arbitration of the statutory claims. This Court went on to hold that a "substantive waiver of federally protected civil rights would not be upheld," citing with approval *Mitsubishi Motors Corp. v. Solar Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 (1985), FN. 19. This Court declined to reach the issue as to whether a substantive waiver of statutory rights had actually occurred in that case, and remanded for this purpose. However, this Court had earlier held in its *14 Penn Plaza* decision that "the decision to resolve ADEA claims by way of arbitration instead of by litigation does not waive the statutory right ... ," thus implying that statutory rights would be waived if arbitration is denied.

The CBA in the case *sub judice* does not even purport to waive statutory rights or the right to a judicial forum. Article 51 of the Southern Supplemental Agreement provides only for resolution through the grievance procedure of any disputes arising under the provisions of this agreement.

In *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 80 (1998), this Court held that it would "not infer from a provision in a CBA that the parties

intended to waive a federal statutory right unless 'explicitly stated.'" This Court also held at 80 that a waiver of a statutory right must be "clear and unmistakable." ... "We will not infer from a general contractual provision that the parties intended to waive a statutory right unless the undertaking is 'explicitly stated' ... the right to a federal forum is of sufficient importance to be protected against less-than-explicit union waivers in a CBA." (*Id.* at 80). This Court added at 81-82 that the CBA in that case specifically limited its grievance procedure to disputes related to the agreement.[2] Thus, the Court concluded that the CBA did not effectively waive the employee's right to a judicial forum for the adjudication of federal statutory claims.

Petitioner respectfully submits that the rule of law referred to by the aforesaid Supreme Court decisions should apply in this case. James R. Pipes never waived his legal right to have his statutory claim decided on the merits by the court, much less his constitutional right under the Seventh Amendment to the United States Constitution to have his claims decided by a jury.

The practical result of the blocking of Pipes' grievance from proceeding to arbitration in this case,

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[2] In *Wright v. Universal Maritime Service Corporation*, *supra*, at 76, this Court observed that the Court had followed the holding of *Alexander v. Gardner-Dixon Co.*, 415 U.S. 36 (1974) in deciding the effect of CBA arbitration upon employee claims under other statutes.

together with the district court's holding that the union's actions did not present a triable Duty of Fair Representation claim, is that the union has effectively (but not lawfully) waived Petitioner's right to an arbitration on his claims and that he has no right to a judicial forum. In *Vaca v. Sipes*, 386 U.S. 171 (1967), this Court held at 571 that "Congress has put its blessing on private dispute settlement arrangements provided in collective bargaining agreements, but it was anticipated, we are sure, that the contractual machinery would operate with some minimum levels of integrity." In the case *sub judice,* the contractual machinery did not operate with minimum levels of integrity because James R. Pipes has been deprived of any independent forum for litigating his claims. The complete waiver of either an arbitral or judicial forum is unlawful, arbitrary, and leaves Petitioner without a job and without a fair opportunity to secure an adequate remedy in violation of the rule of *Vaca v. Sipes*, *supra*.

In *Mitsubishi Motors Corp. v. Solar Chrysler-Plymouth, Inc.*, *supra*, this Court added at 637 FN. 19: if "the choice-of-forum and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue statutory remedies – we would have little hesitation in condemning the agreement as against public policy."

Although the Respondents suggested below that informal hearings before joint grievance committees are adequate substitutes for the right of a citizen to his or her day in court before a jury of peers, the

Petitioner respectfully disagrees. Joint grievance committees suffer from all of the disadvantages of arbitration, including the fact that the unions' interests and those of the individual employees are not always identical or even compatible, and as a result, the union may present the employees' grievances less vigorously or make different strategy choices than would the employees. Cf. *McDonald v. City of West Brand Michigan,* 466 U.S. 284 (1984). Moreover, in this case, the deadlock committee suffered from the further impediment that it was a two-person committee – one person was an employee of UPS and one person was appointed by the IBT, the Respondents in this case. Therefore, the neutrality of the committee is doubtful. In addition, the company representative on the deadlock committee, Jerry Gordanier, had been lobbied *ex parte* by the very person who made the decision to terminate Pipes, UPS' Robert Lee Russell, Jr., before the committee took up Pipes' grievance.

In the seminal case of *Vaca v. Sipes*, *supra,* this Court described the circumstances in which an employee may obtain judicial review of his § 301 Duty of Fair Representation arbitration claims. The Court held:

> We think that another situation when the employee may seek judicial enforcement of his contractual rights arises if, as is true here, the union has *sole power* under the contract to invoke the higher stages of the grievance procedure, and if, as is alleged

> here, the employee-plaintiff has been prevented from exhausting his contractual remedies by the union's *wrongful refusal* to process the grievance. It is true that the employer in such a situation may have done nothing to prevent exhaustion of the exclusive contractual remedies to which he agreed in the collective bargaining agreement. But the employer has committed a wrongful discharge in breach of that agreement, a breach which could be remedied through the grievance process to the employee-plaintiff's benefit were it not for the union's breach of its statutory duty of fair representation to the employee. **To leave the employee remediless in such circumstances would, in our opinion, be a great injustice.** We cannot believe that Congress, in conferring upon employers and unions the power to establish exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract. Nor do we think that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by wrongful union conduct in the enforcement of such agreements. (Emphasis supplied.) (*Id.* at 185-186).

In the case *sub judice*, James R. Pipes has been left remediless, which suggests the need for review by this Court to address and clarify the interplay of the principles of law involved in this case.

The Joint Grievance Committee's Interpretation of the CBA Did Not Enforce the CBA According to its Terms, But Interpreted the CBA on the Basis of Policy.

Petitioner, was terminated by letter dated April 25, 2007, which stated: "This letter is being sent to confirm your termination with the United Parcel Service per Article 52 of the Master Agreement: Just Cause – recklessness resulting in a serious accident."

The CBA consists of the "National United Parcel Service Master Agreement" and "Southern Region Supplemental Agreement." Article 52 of the Southern Region Supplemental Agreement provides that: "the employer shall not discharge nor suspend any employee without just cause." The term "serious accident" is defined in the pertinent provision of Article 18 § 3 of the Master Agreement as one in which: "A citation is issued and one or more vehicles incurred disabling damages as a result of the accident requiring the vehicle to be transported away from the scene by a tow truck or other vehicle." There is no other definition in the CBA of the term "serious accident."

In "Williston on Contracts," § 55:24 (Thomson Reuter/West 2009), the author states: "it is common, for example, for the courts to treat a master agreement and its local supplement as a single, unitary collective bargaining agreement...." *See also International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America*

(UAW) v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1984), to the same effect.

These principles are consistent with the declaration of IBT Vice-President, Richard K. Hall, in which he states: "the master language and all of the supplemental revisions constitute a multi-union bargaining agreement." Douglas Beckum, the Business Agent of Petitioner's local Teamsters Union, testified that both the Master Agreement and the Southern Region Supplemental Agreement are parts of the same collective bargaining agreement.

IBT's International Vice-President, Kenneth W. Wood, testified as the IBT's FRCP Rule 30(b)(6) deposition representative. He testified that the term "serious accident" is defined in the CBA in Article 18 § 2 and § 3 of the Master Agreement. He added that in order to be a "serious accident" under the terms of the CBA, a citation has to be issued. Douglas Beckum's deposition testimony agreed with that of Wood.

In *Continental Airlines v. Air Lines Pilots Association, International*, 555 F.3d 399 (5th Cir. 2009), the Court reviewed an order of a district court reversing a reinstatement and held: "An LCA is a supplement to a collective bargaining agreement, and its terms are just as binding on an arbitrator as those of the collective bargaining agreement. Unambiguous provisions of an LCA may not be ignored." (*Id.* at 406).

Nevertheless, the district court assumed that Pipes had been involved in a "serious accident" as defined in the CBA and implicitly premised much of its analysis on this assumption. Pipes respectfully submits that this conclusion is erroneous as a matter of law.

In the recent decision in *Stolt-Nielsen v. Animalfeeds International Corporation*, 2010 WL 1655826, ___ U.S. ___ (2010), this Court held at 4: "It is only when an arbitrator strays from interpretation and application of the agreement and effectively 'dispenses his own brand of industrial justice' that his decision may be unenforceable." This Court held at 6: "The opinion states that: ... 'operators must look to the language of the parties' agreement to ascertain the parties' intention of whether they intended to permit or preclude class action....'" This Court added at p.9. "As with any agreement to arbitrate, we are obliged to enforce the parties' supplemental agreement 'according to its terms.'"

See also Sanderson v. Ford Motor Company, 483 F.2d 102 (5th Cir. 1973), the district court had held that the adjustment of the plaintiff's date-of-entry was a violation of the CBA as a matter of law and could not be squared with any reasonable interpretation of it. (*Id.* at 111). The court of appeals agreed that the CBA was clear and unambiguous and allowed no exceptions. Thus, the court held that: "The adjustment obviously violated the contract."

In *Continental Airlines, Inc. v. Air Lines Pilots Association, International, supra*, the Court also held: "The SBA 'may look beyond the written contract when interpreting a collective bargaining agreement if the instrument is ambiguous or silent upon a precise question.'" (*Id.* at 406-407). However, in the case *sub judice*, there is no ambiguity or silence upon a precise question. There is no evidence of any amendments to the CBA, no industrial common law, and no gap in the CBA which the employer and the union needed to resolve by negotiation through the grievance process. The definition of a "serious accident" is expressly and unambiguously set forth in Article 18 of the Master Agreement. The Master Agreement and its Southern Supplement should be treated as a single CBA, and the CBA as a whole should be applied and enforced as written.

Alternatively, even if the CBA in this case is ambiguous, and it is not, the ambiguity would create a genuine issue of material fact for trial. *See Guidry v. American Public Life Insurance Company*, 512 F.3d 177 (5th Cir. 2007), in which the court held that when a contract is ambiguous and susceptible to multiple interpretations, the intent of the parties must be determined by the trier of fact and summary judgment is appropriate.

In *Stolt-Nielsen v. Animalfeeds International Corporation, supra*, this Court also held at p.7 that: " ... the task of an arbitrator is to interpret and enforce a contract, not to make public policy.... In this case, we must conclude that what the arbitration

panel did was simply to impose its own view of sound policy...." This Court also held at p.8 that: "The panel proceeded as if it had the authority of a common-law court to develop what it viewed as the best rule to be applied in this situation." This Court concluded at p.9: "In sum, instead of identifying and applying a rule of decision derived from the FAA or either maritime or New York law, the arbitration panel imposed its own policy choice and thus exceeded its powers."

The decision of the joint deadlock committee only stated: "Based on the facts presented in this particular case, the claim of the union is denied." (*See* App. 35.)

However, in the court the Respondents produced and ruled upon a declaration from the UPS representative on the deadlock committee, Jerry Gordanier. Gordanier's declaration made it clear that the committee's interpretation was based on *Public*. His declaration asserts at 9 and 10:

> Our interpretation of Article 52 in this regard is significant to our ability to meet our safety obligations to the general public. UPS employs thousands of highly trained professional drivers who operate large, and potentially dangerous, vehicles on highways, roads, and streets throughout the United States and the world. To protect the company and the public, we reserve the right under the CBA to discharge employees we determine to have engaged in "recklessness" that

> resulted in a serious accident, whether or not a citation was issued to the driver.
>
> We do not deem a citation necessary to determine that an accident is "serious." UPS has discharged drivers where there was no citation because the accident occurred on company property, where the accident was not reported to the police, or where the police officer on the scene was unable to determine which driver was at fault (*i.e.*, UPS, in holding its drivers to a higher standard, may determine that recklessness occurred due to a driver's gross failure to follow defensive driving methods on which the driver had been repeatedly trained even though the police officer investigating the accident did not assign "fault"). We also have recognized that some police officers in the South (who themselves are union members) are reluctant to issue citations to professional drivers who also are fellow union members. We do not want to place our ability to manage our employees, and protect the general public, in the sole discretion of a police officer who knows nothing about how extensively we train our drivers on defensive driving methods and the high safety standards we set for them.

Gordanier's declaration makes no reference to the mutual intent of the parties to the CBA, only to UPS' unilateral intent. The affidavit of the union-side member of the deadlock committee, Clay Jeffries, sets forth no basis whatever for his purported interpretation of the CBA.

As this Court found in *Stolt-Nielsen v. Animal-feeds International Corporation, supra*, instead of identifying a rule of law or decision derived from the FAA, labor, or Louisiana law, the deadlock committee imposed its own policy choice and thus exceeded its powers.

The FRCP Rule 30(b)(6) deposition representative, designated by UPS, Robert Lee Russell, Jr., acknowledged that, other than Article 18, there is no other definition of the term "serious accident" in the CBA. Russell testified in his deposition that "my position is that Article 52 is independent of Article 18 in this instance." When asked for the basis for his interpretation of the meaning of the term "serious accident" as used in the CBA, he testified that his interpretation was "what he felt." This testimony illustrates the reason for the CBA's definition of the term "serious accident" – to secure for UPS drivers an objective standard based on the disinterested opinion of the investigating officer – rather than affording UPS officials unbridled discretion to subjectively determine whether a "serious accident" occurred based on their own feelings.

The district court found at p.2, FN. 3: "The two (2) agreements were negotiated separately and have separate provisions for grievance and arbitration procedures." This was the sole finding of the district court that formed the basis for the district court's implied premise that a finding of recklessness does not require a citation because Articles 18 and 52 appear in "separate" agreements.

The district court's finding conflicts with the declaration of IBT Vice-President, Richard K. Hall, that the "Master Agreement and all of the supplemental revisions constitute a multi-union bargaining agreement." This finding also conflicts with the testimony of Douglas Beckum that the National Master Agreement and the Southern Regional Supplement are parts of the same CBA.

UPS' assertion also conflicts with Article 2, § 1 of the National Master Agreement. Section 1 provides:

> All employees covered by this Master Agreement and the various Supplements, Riders and Addenda thereto, shall constitute one (1) bargaining unit. The printing of this Master Agreement and the aforesaid Supplements, Riders and/or Addenda in separate agreements is for convenience only and is not intended to create separate bargaining units.

Section 2 also provides:

> Any new Supplement, Rider or Addendum, or changes to Supplements, Riders or Addenda or in the contract affiliation of any Local Union covered by this Agreement must be submitted to the Joint National Negotiating Committee for review and approval. Failure to be approved by the Committee shall render said Supplement, Rider or Addendum null and void.... Any lesser conditions contained in any Supplement, Rider or Addendum shall be superceded by the conditions contained in this Master

> Agreement. However, except where specifically stated otherwise in the Master Agreement, nothing in this Master Agreement shall deprive any employee of any superior benefit contained in their Supplement, Rider or Addendum.

It is important to note that the contractual definition of "serious accident" is contained in the National Master Agreement. Therefore, in accordance with Article 2, § 2, if Article 52 of the Southern Region Supplement provides a "lessor condition" as claimed by UPS, then it is "superceded" by the conditions set forth in the National Master Agreement, under Article 18.

Thus, while the CBA expressly provides that a citation is necessary to sustain a charge of recklessness causing a serious accident, the joint grievance committee disagreed and said that a citation is not necessary to sustain a charge of recklessness causing a serious accident. Clearly, the joint grievance committee was "dispensing its own brand of industrial justice."

B. This Court Should Decide the Important Question of Federal Law Which Has Not, But Should Be, Decided by This Court, as to Whether an International Union Which, Appoints the Union-Side Member of a Joint Grievance Committee, Owes a Duty of Fair Representation in Connection with the Processing, of a Grievance Under the International Union's National Grievance Machinery.

The Respondents contended below that the IBT did not owe a duty of fair representation in this situation because it was not Pipes' exclusive bargaining agent. However, the CBA states at p.5 that the National Union Committee[3] and the local union affiliates with the IBT are the exclusive bargaining representatives.

Clay Jeffries was the IBT appointee on the joint grievance deadlock committee. Douglas Beckum, the

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[3] The Constitution of the IBT confirms that the collective bargaining agreement in this case is negotiated on a national basis. The Constitution provides that the General President of the Teamsters is the chairman of any national negotiating committee. The Constitution also makes it clear that the General President of the Teamsters appoints the union-side members of the negotiating committees who negotiate the CBA. The Constitution also provides that the General President has the authority to appoint the union chairperson of any joint arbitration and grievance panels "by master agreements, including any supplements, addenda, riders, and other agreements established pursuant to and made a part of the Master Agreement."

Business Agent of Teamsters Local 568, testified that Jeffries was the Joint Grievance Committee member for the International Brotherhood of Teamsters. Kenneth W. Wood also testified that he himself appointed Jeffries to the joint grievance committee. He stated that Jeffries was not serving on behalf of Teamsters Local 385 while he was serving on the committee or on behalf of Pipes' Local 568. He added that Jeffries was participating in a national grievance under the terms and conditions of the Southern Supplemental Agreement.

In *Granite Rock Company v. The International Brotherhood of Teamsters, et al., Local No. 287*, 129 S.Ct. 2865 (2009), this Court granted certoirari on two (2) questions, the second of which was:

> Does § 301(a) of the Labor-Management Relations Act, which generally preempts otherwise available state law causes of action, provide a cause of action against an international union that is not a direct signatory to the collective bargaining agreement, effectively displaces its signatory local union and causes a strike breaching a collective bargaining agreement for its own benefit.

In the event that this Court answers this question in the affirmative, Petitioner respectfully submits that the case *sub judice* may be an appropriate vehicle for this Court to give meaning and content to the duty of fair representation in this context.

In *Alexander v. International Union of Operating Engineers*, 624 F.2d 1235 (5th Cir. 1980), the court reversed the dismissal of a duty of fair representation suit against an international union. The court reasoned that the international union was at fault in negotiating CBAs, because its negotiation resulted in violating the local members' rights. The same conclusion should apply in this case. This particularly so where, as here, it was the IBT's appointee on the Joint Grievance Committee who took the specific action that caused harm to Petitioner.[4]

"The key is that the union is administering a provision of the contract, something that we have always held is subject to the duty of fair representation." *Breininger v. Sheet Metal International Association Local Union No. 6*, 493 U.S. 67 (1989), at 88. This rule of law was correctly applied by the court in *Doss v. International Brotherhood of Teamsters*, 140 F. Supp. 2d. 1304 (M.D. Fla. 2001). The court held that there was a genuine issue of material fact as to the liability of the IBT on a duty of fair representation claim because the plaintiff's grievance appeal was denied, based on a determination by the SRAPGC, which was a function of the IBT, and not the local union, and because the appeal may have

[4] Douglas Beckum, Business Agent of Pipes' local union, testified in his deposition as to what occurs after a grievance reaches the Southern Region Area Panel Grievance Committee (hereafter "SRAPGC"). He stated "it's out of our hands. It's really up to the committee at that point."

been considered using Article 52 of the National Master Contract.

In the case *sub judice*, the IBT provided a FRCP Rule 30(b)(6) deposition pursuant to notice. The IBT designated, as its Rule 30(b)(6) representative, Kenneth W. Wood, who testified that the CBA was negotiated by a Negotiating Committee for the union side, which was comprised of representatives of the International Brotherhood of Teamsters. Obviously, "Teamsters Negotiating Committee" and the "National Union Committee" are simply agents of the IBT. The Chairman of the Negotiating Committee was Mr. James Hoffa, IBT President, and the Chief Negotiator was Mr. Ken Hall, IBT Vice-President.

In *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), this Court held:

> It is true that *Vaca* dealt with the refusal by the union to process a grievance. It is also true that where the union actually utilizes the grievance and arbitration procedure on behalf of the employee, the focus is no longer on the reasons for the union's failure to act but on whether, contrary to the arbitrator's decision, the employer breached the contract and whether there is a substantial reason to believe that a union breach of duty contributed to the erroneous outcome of the contractual procedure. (*Id.* at 567-568).

This Court also noted in *Vaca v. Sipes*, 386 U.S. 171 (1967), that the Court had "proceeded on the basis that [the joint committee's decision] ... was

reviewable and vulnerable if tainted by breach of the duty on the part of the union, even though the employer had not conspired with the union." The *Hines* decision concluded:

> Congress has put its blessing on private dispute settlement arrangements provided in collective bargaining agreements, but it was anticipated, we are sure, that the contractual machinery would operate within some minimum levels of integrity. In our view, enforcement of the finality provision where the arbitrator has erred is conditioned upon the union's having satisfied its statutory duty fairly to represent the employee in connection with the arbitration proceedings. Wrongfully discharged employees would be left without jobs and without a fair opportunity to secure an adequate remedy.[b] (*Id.* at 571).

See also Bieski v. Eastern Automobile Forwarding Company, 396 F.2d 32 (3rd Cir. 1968) at 40-41 (to the same effect).

In *Air Line Pilots Association v. O'Neill*, 499 U.S. 65 (1991), this Court held that the rule announced in *Vaca v. Sipes*, *supra*, that a union breaches its duty of fair representation applies to all union activities,

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[b] In *Delcostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), this Court held at 165: "The employee may, if he chooses, sue one defendant and not the other, but the case he must prove is the same whether he sues one, the other or both."

including contract negotiations. This Court further explained its holding at 77: " ... we have repeatedly noted that the *Vaca v. Sipes* standard applies to 'challenges leveled not only at a union's contract administration and enforcement efforts but at its negotiation activities as well....' We doubt, moreover, that a bright line could be drawn between contract administration and contract negotiation.... Some union activities subject to the duty of fair representation falling into neither category." *See also Shea v. International Association of Machinists and Aerospace Workers*, 154 F.3d 508 (5th Cir. 1998).

In *Breininger v. Sheet Metal Workers International Associates Local Union 6*, 493 U.S. 67 (1989), this Court held at 76: "We have never suggested that the *Vaca* rule contains exceptions based on the subject matter of the fair representation claim presented." The Court added at 87-89 that the fact that, in some aspects of its activities as the bargaining agent, the union does not "represent" the employer in the traditional sense of the word, does not mean that it does not cease to owe the duty of fair representation because the union is nevertheless "administering a provision of the contract...."

In *Conley v. Gibson*, 355 U.S. 41 (1957), this Court held that the duty of unions to arbitrate grievances fairly includes the duty of "the protection of employee rights, already secured by the contract."

In *14 Penn Plaza, LLC v. Pyett*, *supra*, this Court held that the duty of fair representation suit "is the

avenue that Congress has made available to redress a union's violation of its duty to its members...." (*Id.* at 1473). *See also Rauch & Berkebile*, "Arbitration in the Unionized Workforce: The Supreme Court Speaks in *14 Penn Plaza*," HR Advisor: Legal and Practical Guidance, July/Aug. 2009 at 5: "Such suits against unions are the remedy of the *14 Penn Plaza* majority said employees could turn when they take issue with the manner and extent to which unions present their grievances."

In the case *sub judice*, the evidence shows that the IBT's appointee on the deadlock committee, Clay Jeffries, played a substantial, indeed determinative, role in contract administration at the national grievance level. He was one of two (2) members of the deadlock committee. As a member, Jeffries arbitrarily agreed with, and effectively condoned, UPS' violation of the CBA and upheld Pipes' termination, in spite of the fact that the express terms of the CBA made UPS' termination of Pipes clearly unlawful. Since the committee was only a two (2) person committee and since the employer representative on the committee predictably voted in favor of his employer, it was Jeffries' actions that blocked Pipes' grievance from proceeding to arbitration before an independent arbitrator appointed by the Federal Mediation and Conciliation Service. Petitioner respectfully submits that the union owed a duty of fair representation in this situation, a duty which is tailored to Jeffries' functioning as a member of the joint grievance committee.

In *Thomas v. United Parcel Service, Inc.*, 890 F.2d 909 (7th Cir. 1989), the court addressed the specific question as to whether a union representative on a joint grievance committee owed the discharged employee a duty of fair representation in connection with the handling of the grievance and arbitration proceeding. The court emphasized that "if we did not impose the duty of fair representation on union officials sitting on joint grievance committees', we would effectively read § 301 out of existence in the grievance context." (*Id.* at 992). The court concluded that a union official sitting on joint grievance committees owes grievants a duty of fair representation. (*Id.* at 923). The criteria are whether the union's conduct was arbitrary, discriminatory, and in bad faith within the meaning of *Vaca v. Sipes*, *supra*. (*Id.* at 922). *See also Olsen v. United Parcel Service*, 892 F.2d 1290 (7th Cir. 1990) (to the same effect).

However, three (3) other circuit courts of appeals have entered decisions which conflict with the decisions of the Seventh Circuit in *Thomas v. United Parcel Service, Inc.*, and *Olsen v. United Parcel Service, supra*. These decisions are *Tongay v. Kroger Company*, 860 F.2d 298, 300 (8th Cir. 1988); *Early v. Eastern Transfer*, 699 F.2d 552, 559 (1st Cir. 1983), *cert. denied*, 464 U.S. 824 (1983); and *Teamsters Local Union No. 30 v. Helms Express, Inc.*, 591 F.2d 211 (3rd Cir. 1979), *cert. denied*, 444 U.S. 837 (1979).

Moreover, Kenneth W. Wood testified in the IBT FRCP Rule 30(b)(6) deposition as follows:

> Q. ... explain to me, Mr. Wood, how the Constitution of the International Brotherhood of Teamsters forms the basis for an opinion that the International Brotherhood does not owe a duty of fair representation in this situation?
>
> A. Are you saying, why they don't?
>
> Q. Yes.
>
> A. They do.

Wood's admission in the FRCP Rule 30(b)(6) deposition that the international union owes a duty of fair representation in this situation should constitute a binding answer on behalf of the IBT, particularly since the IBT offered no claim or explanation that Wood's admission was a mistake or that he was confused.

Petitioner respectfully submits that this Court should grant certiorari in this case to resolve the conflicting circuit opinions and determine if, and/or to what extent, an international union owes a duty of fair representation in this factual context.

C. This Court Should Decide the Important Questions of Federal Law Which Have Not Been, But Should Be, Decided by This Court, as to What Are the Specific Legal Duties of a Union-Side Member of a Joint Grievance Committee and Whether Breaches of These Duties Are Arbitrary and Violative of the Duty of Fair Representation.

In *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960), this Court held: " ... an arbitration is confined to interpretation and application of the CBA; it does not sit to dispense its own brand of industrial justice." (*Id.* at 597). In *American Eagle Airlines, Inc. v. Air Lines Pilots Association, International*, 343 F.3d 401 (5th Cir. 2003), the court held: ".... if the language of the applicable collective bargaining agreement is "clear and unequivocal, an arbitrator is not free to change its meaning. In short, an arbitrator may not ignore the plain language of the contract." (*Id.* at 405).

Many courts have concluded that a union's violation of a CBA is arbitrary and a violation of the duty of fair representation. *See, e.g., Butler v. Local Union*, 514 F.2d 442 (8th Cir. 1972), *cert. denied*, 423 U.S. 924 (1975); and *Price v. International Brotherhood of Teamsters, 823*, 457 F.2d 605 (3rd Cir. 1972); *Summers*, "The Individual Employee's Rights Under the Collective Bargaining Agreement: What Constitutes Fair Representation," 126 U. Pa. L. Rev. 251 (1975).

Many other courts have held that a union violated its duty of fair representation by arbitrarily interpreting and failing to enforce a CBA.

In *Linton v. United Parcel Service, Inc.*, 15 F.3d 1365 (6th Cir. 1994), the court held that there was a triable issue of material fact as to whether the IBT breached its duty of fair representation by refusing to appeal the plaintiff's grievance over his discharge. As the court stated at 137: " ... UPS unilaterally decided that it would not reinstate Linton, and the union simply gave up." *See also Local 4076, United Steelworks of America v. United Steelworkers of America,* 338 F. Supp. 1154 (W.D. Pa. 1972) (to the same effect).

In *Griffin v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America,* 469 F.2d 181 (4th Cir. 1972), the court held that each of the three separate standards of the duty of fair representation represents a distinct and separate obligation, the breach of which may constitute the basis for civil liability. (*Id.* at 183). The court also held that: "A union must especially avoid capricious and arbitrary behavior in the handling of a grievance based on a discharge – the industrial equivalent of capital punishment." (*Id.* at 183).

In *Bache v. American Telephone and Telegraph Company*, 840 F.2d 283 (5th Cir. 1988), the court held that a union can breach its duty of fair representation if it does not enforce a CBA and prosecute members' grievances arising under CBAs non-arbitrarily and

in good faith. (*Id.* at 289). The court went on to hold at 291 that a union may violate its duty of fair representation if its interpretation of a CBA or its decision to apply the collective bargaining agreement in a particular manner is arbitrary. This court added that a union's abandonment of a meritorious grievance may also violate its duty of fair representation.

In *Summers*, "The Individual Employee's Rights under the Collective Bargaining Agreement: What Constitutes Fair Representation," *supra*, Professor Summers synthesized the law on the duty of fair representation and sets forth a number of cogent comments which are quite pertinent to the case *sub judice*. Petitioner would like to borrow from Professor Summers' article in making the following observations:

- A union has a responsibility to exercise its control of the grievance procedure on behalf of the employees it represents, rather than against the individual employees.

- "The legally enforceable rights of individual employees acquired under collective bargaining agreements are valuable personal rights and the union's ability to prevent employees from enforcing these rights should be limited." In the words of the court in *Vaca v. Sipes*, *supra*, "we cannot believe that Congress, in conferring upon employers and unions the power to establish

exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract." (*Id.* at 6).

- A union should not be afforded the power to nullify provisions of the collective bargaining agreement by blocking a grievance from going to arbitration. If changes are needed in the collective bargaining agreement the union and employer should negotiate an amendment. " ... the union's refusal to enforce provisions of the contract violates its obligation to represent employees who have legal rights under the contract. In more basic terms, the union's action here is 'arbitrary' in the most fundamental meaning of the word – not governed by principle.

- The contract establishes rules. The refusal to follow these rules can only be described as arbitrary. For the union to reject a grievance that correctly protests a violation of the contract is to arbitrarily ignore a meritorious grievance.

- The individual employee has a right to have clear and unquestioned terms of the collective bargaining agreement that have been made for his benefit, followed and enforced until the agreement is properly amended. For the union to refuse to follow and enforce the rules

> and standards it has established on behalf of those it represents is arbitrary because it is a violation of its fiduciary obligation." (*Id.* at 14).

Kenneth W. Wood testified, on behalf of the IBT, at the FRCP Rule 30(b)(6) deposition that the term "serious accident" is defined in the CBA in Article 18 is one in which a citation is issued. When asked if there was a reasonable basis for the joint grievance committee to sustain James Pipes' termination in light of the fact that he did not receive a citation, Wood testified, as an IBT Vice-President, that he did not have any idea as to how or why the committee came to that determination. He also testified that, as a result, Pipes' grievance did not go to arbitration before an independent arbitrator appointed by the Federal Mediation and Conciliation Service. Douglas Beckum likewise testified that he knows of *no* reasonable basis on which this grievance could have been denied by the joint grievance committee in light of the clear and unambiguous provisions of the CBA. The reasonable inference to be drawn from the testimony is that the IBT violated the CBA and had no non-arbitrary basis for doing so. A violation of the express provision of a CBA is unlawful and cannot be upheld even under the legal standards applicable to the review of arbitral awards.

In *Bowen v. United States Postal Service*, 459 U.S. 212 (1983), this Court held that the union violated its duty of fair representation by failing to pursue arbitration of the grievance "for no apparent

reason." However, in the case, there is a "reason," a reason which is unlawful in and of itself – Clay Jeffries acquiesced in UPS' unlawful interpretation of the CBA and effectively read out of this agreement the requirement that a driver receive a citation before he can be charged with "recklessness."

In *Richardson v. Communications Workers of America*, 443 F.2d 974 (8th Cir. 1971), the court held that breach of a CBA by the bargaining agent creates a claim for breach of its statutory duty to provide adequate representation to the employee. The court held at 981: "The focal issue in a § 301 suit is the employer's non-compliance with the collective bargaining agreement and the union's complicity in that breach."

In *Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976), this Court held:

> .... It is urged that when the procedures have been followed and a decision favorable to the employer announced, the employer must be protected from relitigation by the express contractual provision declaring a decision to be final and binding. We disagree. The union's breach of duty relieves the employee of an express or implied requirement that disputes be settled through contractual grievance procedures; if it seriously undermines the integrity of the arbital process the union's breach also removes the bar of the finality provisions of the contract. It is true that *Vaca* dealt with a refusal by the union to process a grievance. But the judicial remedy

in *Humphrey v. Moore* was sought after the adverse decision of the joint arbitration committee. Our conclusion is that case was not that the committee's decision was unreviewable. On the contrary, we proceeded on the basis that it was reviewable and vulnerable if tainted by breach of duty on the part of the union, even though the employer had not conspired with the union. The joint committee's decision was held binding on the complaining employees only after we determined that the union had not been guilty of malfeasance and that its conduct was within the range of acceptable performance by a collective-bargaining agent, a wholly unnecessary determination if the union's conduct was irrelevant to the finality of the arbitral process. "The Union conclude(d) both that arbitration would be fruitless and that the grievance should be dismissed" only after it had "processed the grievance into the fourth step, attempted to gather sufficient evidence to prove (the employee's) case, attempted to secure for (him) less vigorous work at the plant, and joined in the employer's efforts to have (him) rehabilitated." *Id.*, at 194, 87 S.Ct., at 919, 17 L.Ed.2d, at 860.... As is the case where there has been a failure to exhaust, however, we cannot believe that Congress intended to foreclose the employee from his § 301 remedy otherwise available against the employer if the contractual processes have been seriously flawed by the union's breach of its duty to represent employees honestly and in good faith and

without invidious discrimination or arbitrary conduct. (*Id.* at 558-570).

UPS owed an enforceable obligation under 29 U.S.C. § 185(a) to refrain from violating the express terms and conditions of the CBA. Under no circumstances can it be said that the union had a lesser duty toward James R. Pipes than did the employer. At the very least, both the employer and the union had the duty to refrain from violating the CBA. However, they both violated this duty. In so doing, the union violated its duty of fair representation.

CONCLUSION

For all the foregoing reasons the Petitioner, James R. Pipes, respectfully concludes that his Petition for Certiorari should be granted.

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May 31, 2010

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 09-30584

JAMES R. PIPES,

Plaintiff-Appellant

v.

UNITED PARCEL SERVICE, INC.;
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:07-CV-1762

(Filed Mar. 2, 2010)

Before KING, JOLLY and STEWART, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R.47.5.4.

The judgment of the district court is AFFIRMED for essentially the reasons set forth in the district court's Ruling entered June 16, 2009.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-30584

D.C. Docket No. 3:07-CV-1762

JAMES R. PIPES,

Plaintiff-Appellant

v.

UNITED PARCEL SERVICE, INC.;
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana, Monroe

Before KING, JOLLY, and STEWART, Circuit Judges.

JUDGMENT

(Filed Mar. 2, 2010)

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that appellant pay to appellees the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: MAR 24 2010

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JAMES R. PIPES	CIVIL ACTION NO. 3:07-CV-1762
VERSUS	
UNITED PARCEL SERVICE, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS	JUDGE ROBERT G. JAMES
	MAG. JUDGE KAREN L. HAYES

RULING

Plaintiff James R. Pipes ("Pipes") brought this action against his former employer, United Parcel Service, Inc. ("UPS"), alleging that he was terminated in retaliation for filing a workers' compensation claim and that his termination was also a breach of the collective bargaining agreement between UPS and Local 568, an affiliate of the International Brotherhood of Teamsters ("the International"). Pipes also asserted a claim against the International for breach of the duty of fair representation in grievance proceedings that followed his termination.

On February 27, 2009, the International filed a Motion for Summary Judgment [Doc. No. 34], seeking dismissal of the claim against it. On March 2, 2009, UPS also filed a Motion for Summary Judgment [Doc. No. 37], seeking dismissal of all claims against it.

Pipes filed a memorandum in opposition to the Motions for Summary Judgment [Doc. No. 81].[1] Pipes also filed a Motion to Strike [Doc. No. 70] portions of the affidavit of Jerry Gordanier, submitted by UPS with its Reply [Doc. No. 61] in support of its Motion for Summary Judgment. UPS filed a memorandum in opposition to the Motion to Strike [Doc. No. 75]. Pipes filed a reply memorandum in support of his Motion to Strike [Doc. No. 85].

For the following reasons, the International's and UPS's Motions for Summary Judgment are GRANTED. Pipes's Motion to Strike is DENIED IN PART and the remainder of his motion is DENIED AS MOOT.

I. FACTS

In October 1999, UPS hired Pipes as a temporary employee during peak season to unload trucks and to work as a driver's helper. After peak season, UPS continued to employ Pipes part time performing preload, local sort, and clerical work and some driving for the Ruston UPS center. In June 2004, UPS hired Pipes full time as a swing driver[2] in the Ruston

[1] Although the memorandum is styled, "Memorandum on Behalf of the Plaintiff, James R. Pipes, in Opposition to Motion for Summary Judgment Filed by the United Parcel Service," Pipes addresses the arguments of both UPS and the International.

[2] Swing drivers do not have their own assigned package routes, but are hired to fill in for drivers with assigned routes.

center, and he worked in that capacity until his termination in April 2007. Throughout his employment, Pipes was a member of Local 568 of the International.

UPS and Local 568 had entered into two agreements, the National Master United Parcel Service Agreement and Southern Region Supplemental Agreement (collectively the "CBA"), which governed the relationship between UPS and the bargaining unit employees.[3] The CBA set forth the rights and remedies for work-related complaints of bargaining unit employees.

UPS drivers were required to have a clean driving record, have a chauffeur's license, and pass a DOT physical (every two years), a driving course, and an annual road test. UPS drivers also receive Space and Visibility training at least annually. UPS emphasizes to its drivers the necessity for them to follow

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[3] The National Master United Parcel Service Agreement ("National Master") and the Southern Region of Teamsters and United Parcel Service, Inc. Supplemental Agreement ("Southern Region Supplement") are actually two separate documents. The National Master applies to all UPS union employees nationwide. The Southern Region Supplement applies only to UPS union employees in the Southern Region or Conference. The two agreements were negotiated separately and have separate provisions for grievance and arbitration procedures. The documents are signed by UPS, the "Teamsters United Parcel Service National Negotiating Committee representing Local Unions affiliated with the [International]," and the Local Union. Defendant International is not a signatory.

the specific driving techniques taught in its training courses, known as the "Five Seeing Habits," and places stickers in its package cars to remind drivers of these defensive driving habits.

Prior to April 2007, Pipes caused three accidents while driving for UPS, all resulting in property damage.

On April 16, 2007, Pipes was driving a UPS package car. Prior to taking the car out, Pipes conducted his daily pre-trip inspection, known as "pre-tripping" the car, including an inspection of the tires. If he had noted any problems or repairs that needed to be made, he would have made a notation on the Driver Vehicle Inspection Report ("DVIR") tablet located in the car. UPS mechanics routinely check the DVIR tablet to see what repairs need to be made and perform those repairs, or take the car out of service.

On the day of April 16, 2007, the weather conditions were dry and clear, and Pipes was traveling on a rural road in Homer, Louisiana. While going around a curve and up a hill, Pipes heard a "pop" come from the package car. Pipes contends that his front passenger wheel immediately pulled off the road to the right. Pipes quickly steered the package car back onto the road to avoid hitting the line of trees in front of him, but then lost control of the car. The back end of the car came around, causing him to turn more than 180 degrees counter-clockwise. As the back end began leading the package car, Pipes crossed the road at a 45-degree angle, hit the embankment on the other

shoulder with his back end, and then rolled completely over once, counter-clockwise, and landed upright. Pipes could not recall if a speed limit was posted on the road, and he did not know for certain how fast he was going.

After the accident, Pipes contacted the Business Agent for Local 568, Doug Beckham ("Beckham")[4], and Clay Burrough ("Burrough"), the UPS Division Manager for a number of centers in north Louisiana, including Ruston. They inquired if Pipes was okay and if he needed an ambulance. The police were called and interviewed Pipes, but did not issue a citation. Burrough, who has 22 years of investigative experience with UPS; Pipes's supervisor, Ronald McCown ("McCown"); Al Delaune ("Delaune"), UPS Gulf South Health and Safety Supervisor; and Gerald Castille ("Castille"), UPS Automotive Supervisor, all traveled to the accident scene to check on Pipes and conduct an investigation. Pipes told Burrough at the scene that the right, front tire of the package car blew out, causing Pipes to go off the road. As a result of the accident, the package car was severely damaged. The gear shift dislodged from the car completely, broke off, and landed on the ground, and the windshield came completely out.

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[4] Beckham's full-time job is to represent the interests of bargaining unit employees and act as the liaison between union employees and UPS management to resolve grievances.

Pipes left the accident scene with McCown and returned to the Ruston UPS center where they contacted UPS's insurance carrier to report the accident. McCown insisted that Pipes contact him after receiving medical treatment. Pipes went home and then went to the emergency room, where Pipes's wife was working as a nurse. Pipes underwent CAT scans and X-rays and was given fluids and pain medication. Pipes suffered minor injuries in the form of cuts, bruises, and scrapes as a result of the accident. He followed up with a physician two to three times after the accident. Pipes was off from work for approximately three weeks until he was cleared to return to full duty.

Although Pipes told Burrough that a blown tire had caused the accident, based on the skid marks and the placement of tire package car, Burrough, Delaune, and Castille believed that Pipes had been traveling too fast around the turn and had caused the accident by overcorrecting. UPS towed the package car to Shreveport for a mechanical inspection. Union mechanics Joffery Cleveland and Glen Davis conducted the inspection under Castille's supervision and found no mechanical problems. Castille also sent the right front tire to Southern Tire Mart, an unrelated company, for inspection. According to Southern Tire Mart, the right, front tire held pressure at 77 psi, did not leak down, was not run flat, and no defects were found in its casing or cap. Photographs of the tire at the scene showed that mud was lodged between the tire and the rim at the point of the seal.

Based on this evidence, Castille came to the conclusion that the tire deflated when it became separated from the rim during the accident, not before the accident. UPS found no evidence that the accident was caused by the tire blowing out or deflating or any other mechanical failure. Pipes disputes Castille's conclusions and was not present for the inspections by UPS or Southern Tire Mart, but he has no reason to believe that the reports are untruthful.

When Burrough received the mechanical inspection report and report from Southern Tire Mart, he concluded that Pipes had lied about the cause of the accident. Burrough sent the accident scene photographs and the reports to UPS Gulf South District Labor Manager Rob Russell ("Russell"). Burrough and Russell made the decision to terminate Pipes for just cause, pursuant to Article 52 of the CBA for "recklessness resulting in a serious accident."[5]

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[5] Article 52 reads in relevant part as follows:

> Article 52 Discharge or Suspension
>
> (A) The Employer shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension shall give at least one (1) warning notice of a complaint against such employee to the employee, in writing, and a copy of the same to the Local Union, except that no warning notice need be given to an employee before discharge if the cause of such discharge is dishonesty, . . . recklessness resulting in a serious accident while on duty, an avoidable runaway accident. . . .

(Pipes Exh. 8, p. 188-89).

On April 25, 2007, McCown, union steward Bruce Rushing, and UPS Business Manager Reginald Wells met with Pipes at the Ruston center. They informed him that he was discharged. After the meeting, Pipes had no other communications with UPS about his termination.

Pipes filed a grievance challenging his termination. Article 51 of the CBA sets forth tire grievance procedure and requires that a grievance proceed through three steps before reaching arbitration: a local hearing, a panel hearing before the Southern Region Area Parcel Grievance Committee ("SRAPGC"), and a panel hearing before a SRAPGC Deadlock Panel ("Deadlock Panel"). The SRAPGC is a committee composed of three UPS representatives and three union representatives. If the SRAPGC does not reach a majority decision on the grievance, the grievance advances to the Deadlock Panel, composed of one UPS representative and one union representative.[6] Cases that are deadlocked at the Deadlock Panel may be referred to binding arbitration before a Federal Mediation and Conciliation Service arbitrator. The CBA expressly provides that decisions at each level of the grievance procedure are "final and binding."

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[6] The union representatives on the SRAPGC and Deadlock Panel are representatives from other International local unions (i.e., local unions of which the grievant is not a member).

Pursuant to the CBA, a local hearing was held at the Shreveport center in an attempt to resolve Pipes's grievance. Beckham represented Pipes at the hearing. Those in attendance inspected the package car, and UPS personnel informed Pipes of the results of the mechanical inspection of the vehicle. The grievance was not resolved at the local hearing and, thus, moved to the next step, a hearing by the SRAPGC.

On May 15, 2007, the grievance was formally heard in Tampa before the SRAPGC. Beckham again represented Pipes at the panel hearing. Russell represented UPS. The SRAPGC heard arguments from both sides, and Pipes made a statement. However, the SRAPGC deadlocked, and the grievance automatically proceeded to the next stage of review before the Deadlock Panel.

On August 16, 2007, the grievance was heard by a Deadlock Panel of two neutral decision makers, Jerry Gordanier ("Gordanier") for UPS and Clay Jeffries ("Jeffries") for the International. Gordanier is a Region Labor Manager for UPS, and Jeffries is a Business Agent for Local 385 out of Orlando, Florida. Although Pipes did not attend the Deadlock Panel hearing, Beckham delivered an opening statement and read Pipes's written statement. Beckham argued that Pipes's discharge violated Article 18 of the CBA because the accident did not meet the definition of "serious accident" in Article 18. Russell represented UPS and argued that Pipes's recklessness caused the serious accident, which justified his termination

under Article 52.14. The Deadlock Panel voted to sustain Pipes's termination on the basis that the accident was serious and that it was caused by Pipes's recklessness.

On October 25, 2007, Pipes filed this lawsuit against UPS and the International.

II. LAW AND ANALYSIS

A. Motions for Summary Judgment

Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial burden of informing the court of the basis for its motion by identifying portions of the record which highlight the absence of genuine issues of material fact. *Topalian v. Ehrmann*, 954 F.2d 1125, 1132 (5th Cir. 1992).

If the moving party can meet the initial burden, the burden then shifts to the nonmoving party to establish the existence of a genuine issue of material fact for trial. *Norman v. Apache Corp.*, 19 F.3d 1017, 1023 (5th Cir. 1994). The nonmoving party must show more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

B. Hybrid Section 301 and Duty of Fair Representation Claims

Section 301 of the Labor-Management Relations Act ("LMRA") provides an employee with a federal cause of action against his employer for breach of a collective bargaining agreement. 29 U.S.C. § 185; *see also Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). Employees also have an implied cause of action against the union which represents them if the union breaches its duty of fair representation.[1] *See Vaca v. Sipes*, 386 U.S. 171 (1967); *see also Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 563 (1990) ("The duty of fair representation is inferred from unions' exclusive authority under the National Labor Relations Act . . . , 29 U.S.C. § 159(a) (1982 ed.), to represent all employees in a bargaining unit."). The Supreme Court has stated that these two claims are "inextricably interdependent." *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 164-65 (1983).

> The interdependency arises from the nature of the collective bargaining agreement. If the arbitration and grievance procedure is the exclusive and final remedy for breach of the collective bargaining agreement, the employee may not sue his employer under § 301 until he has exhausted the procedure. Further he

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[1] Within the meaning of 29 U.S.C. § 185, it is undisputed that UPS is an "employer" and that both Local 568 and the International are "labor organization[s]." 29 U.S.C. § 185

> is bound by the procedure's result unless he proves the union breached its duty of fair representation.

Daigle v. Gulf State Utility Co., 794 F.2d 974, 977 (5th Cir. 1986). Thus, "[t]o prevail against either the company or the Union, . . . [the employee] must not only show that [his] discharge was contrary to the contract but must also carry the burden of demonstrating a breach of duty by the Union." *DelCostello*, 462 U.S. at 164 65; *see also Brown v. Witco Corp.*, 340 F.3d 209, 213 n.5 (5th Cir. 2003).

The trial court engages in a two-step analysis to evaluate these so-called hybrid Section 301/fair representation claims. Because the union's breach of its duty of fair representation is an "indispensable predicate" to recovery against the employer, the court should first determine whether there is sufficient evidence to support the claim against the union. *Landry v. The Cooper/T. Smith Stevedoring Co., Inc.*, 880 F.2d 846, 851 (5th Cir. 1989) (citations omitted). If so, the court then reviews the Section 301 claim to determine whether the employee has proved that the employer discharged him in violation of the collective bargaining agreement. *See id.* Accordingly, this Court will first address Pipes's claim against the International.

1. Pipes's Section 301 Claim Against the International

Pipes asserts a claim against the International for breach of the duty of fair representation.

A union has a statutory duty to represent fairly all bargaining unit employees in the enforcement of the collective bargaining agreement. *Vaca*, 386 U.S. at 177. However, an employee has no "absolute right" to have his grievance taken to arbitration or to a specific level of the grievance process. *Landry*, 880 F.2d at 852. The mere fact that a union fails to pursue arbitration is insufficient as a matter of law to demonstrate a breach of its duty of fair representation. *See Vaca*, 386 U.S. at 192. Rather, a union has "an obligation to prosecute a grievance 'with reasonable diligence unless it is decided in good faith that the grievance lacked merit or for some other reason should not be pursued.'" *Landry*, 880 F.2d at 852 (quoting *Mammons v. Adams*, 783 F.2d 597, 602 (5th Cir. 1986)). Neither "simple negligence [nor] a mistake in judgment" is a breach of the union's statutory duty; the "critical question" is whether the union's actions were "arbitrary, discriminatory or in bad faith." *Id.*; *see also Vaca*, 386 U.S. at 190.

In this case, the CBA identified Local 568 and the National Negotiating Committee as the exclusive bargaining representatives under the CBA, not the International. The United States Supreme Court has recognized that common law principles of agency govern whether an international union is liable for

the actions of a local affiliate. *See Carbon Fuel Co. v. United Mine Workers of Am.*, 444 U.S. 212, 216-17 (1979) (applying the common law principles to determine whether an international union was liable for an unauthorized strike by one of its locals). Thus, an international union is not "vicariously liable for the acts of the local union or its business agent" merely on the basis of their relationship. *See Mammons v. Adams*, 783 F.2d 597, 604, 604 n.29 (5th Cir. 1986) (citing, in dicta, *Shimman v. Frank*, 625 F.2d 80, 97 (6th Cir. 1980)); *see also Shimman*, 625 F.2d at 97 ("The International Union is a separate body from the local. The acts of the local and its agents cannot automatically be imputed to the International."); *Mosley v. Roadway Exp. Inc.*, Civil Action No. H-07-1406, 2009 WL 1064182, at *8 n.5 (S.D. Tex., Apr. 17, 2009) (where plaintiff conceded that the Local, not the International Union, was his exclusive bargaining agent, his claim against the International Union was dismissed).

In this case, Pipes's sole complaint against the International is that the union member of the Deadlock Panel, Clay Jeffries, voted to uphold his termination.

First, the Court finds that it is doubtful that the International owed Pipes a duty of fair representation in the grievance process. The International was not a signatory to the CBA. *See Teamsters Local Union No. 30 v. Helms Express, Inc.*, 591 F.2d 211, 217 (3d Cir. 1979); *Sine v. Local No. 992, Int'l Bhd. of Teamsters*, 730 F.2d 964 (4th Cir. 1984). In addition, the

International had not assumed the role of bargaining unit representative, was not the administrator of the CBA, and had not undertaken Pipes's representation in the grievance process.

However, the Court recognizes at least one appellate court has also found that "the duty of fair representation [is] a flexible duty, varying as the union function varies," and thus, "the union owes its members a duty of fair representation while serving in each of its many roles," including a duty of fair representation while serving as a member of a joint grievance committee.[8] *See Thomas v. UPS*, 890 F.2d 909, 922 (7th Cir. 1989). Nevertheless, even in *Thomas*, the Seventh Circuit recognized that the "nature of the union's role in sitting on a [joint grievance committee] is essentially that of an arbitrator and the union fulfills its duty of fair representation by rendering a fair and impartial decision on the merits." *Id.* In that regard, a union member of a joint grievance committee cannot "rely upon political, religious, racial, ethnic, personal, or otherwise impermissible factors when ruling upon a grievance petition." *Id.*; *see also Olsen v. United Parcel Service*, 892 F.2d 1290, 1297 (7th Cir. 1990) ("[W]e have held

[8] The Court is also aware that the International's Rule 30(b)(6) representative, Kenneth Wood, testified that the International owed a duty of fair representation to Pipes. Wood's opinion on a legal conclusion does not create a genuine issue of material fact for trial. Nevertheless, for the reasons discussed, *infra*, Pipes cannot meet his burden even if he was owed a duty of fair representation by the International.

that fair representation in the JGC context is met by the fair and impartial consideration of grievances without regard to 'political, religious, racial, ethnic, personal, or otherwise impermissible factors. . . .'") (citing *Thomas*, 890 F.2d at 922)).

The Court need not determine today whether the International owed Pipes a duty of fair representation because its appointees served on the SRAPGC and/or the Deadlock Panel.[9] Even if Pipes was owed a duty by the International, there are no genuine issues of material fact for trial. Pipes has admitted that his grievance was filed, was taken through the proper steps, and that he was satisfied with the representation of Local 568's Business Agent, Beckham, at the local and panel hearings. There was no majority decision reached at the SRAPGC, and the case advanced to the Deadlock Panel. Although he was not present at the Deadlock Panel, he had no reason to believe that Beckham had not represented him well there, too. The role of the International appointee to the Deadlock Panel, Jeffries, was not to advocate for Pipes, but to render, along with his UPS counterpart, a neutral decision. Pipes has produced no evidence that Jeffries or any other representative of the

[9] Likewise, the Court need not reach Pipes's argument that the International owed a duty of fair representation to him because the "Teamsters United Parcel Service National Negotiating Committee" participated in the negotiation of the CBA, was a signatory to the CBA, and was identified as an exclusive bargaining agent, along with Local 568. [Doc. No. 81, p. 11].

International acted arbitrarily, capriciously, or discriminatorily. Jeffries has provided affidavit testimony that he voted to sustain the grievance and uphold Pipes's termination "solely on [his] independent voluntary judgment of the merits of the grievance based on the hearing evidence and the applicable contract language." [Doc. No. 34, Jeffries Aff., ¶ 8], While Pipes is understandably dissatisfied with the result of the grievance process and that he was not permitted to proceed to arbitration, his personal dissatisfaction is insufficient to raise a genuine issue of material fact for trial. Thus, the International's Motion for Summary Judgment on Pipes's Section 301 claim is GRANTED, and the claim is DISMISSED WITH PREJUDICE.

2. Pipes's Section 301 Claim against UPS

Pipes cannot establish his remaining Section 301 claim against UPS for breach of the CBA without also having established that the International breached its duty of fair representation. Having found no genuine issue of material fact to support Pipes's claim against the International, the Court must also dismiss the Section 301 claim against UPS. UPS's Motions for Summary Judgment on Pipes's Section 301 claim is also GRANTED, and this claim is DISMISSED WITH PREJUDICE.

C. Workers' Compensation Retaliation

Pipes also asserted a workers' compensation retaliation claim against UPS under Louisiana Revised Statute Section 23:1361(B).

Section 23:1361(B) provides: "No person shall discharge an employee from employment because of said employee having asserted claims for benefits under the provisions of this chapter or under the laws of any state or the United States." In advancing a claim for retaliatory discharge under the Workers' Compensation Statute, the employee bears the burden of proving by a preponderance of the evidence that he was terminated for asserting a workers' compensation claim. *Lewis v. Willamette Indus., Inc.*, 537 So. 2d 780 (La. App. 2d Cir. 1989). In a case where "the employer offers another justification in connection with firing a workers' compensation claimant, the trial court must ascertain the employer's true reason or motive based on the facts presented. An employer cannot circumvent the statute by stretching the facts out of context or inventing an excuse for firing a compensation claimant." *Id.* at 783.

"Timing of the dismissal alone is insufficient to carry the employee's burden of proof." *Woolsey v. Delta Disposals, L.L.C.*, 40,339 (La. App. 2 Cir. 10/26/05); 914 So.2d 618, 621 (citing *King v. Career Training Specialists, Inc.*, 35,050 (La. App. 2 Cir. 9/26/01); 795 So.2d 1223, 1228). Rather, timing may be some evidence of retaliatory motive when presented with additional evidence. *See King*, 795 So.2d

at 1228. Even so, "[e]mployee fault may be a sufficient independent basis for termination coincident with the employee's filing of a compensation claim. *Woolsey*, 914 So.2d at 622 (citing *Myers v. Omni Hotel, Inc.*, 94-2004 (La. App. 4 Cir. 4/13/95); 654 So.2d 771).

In this case, Pipes's only evidence to support his claim of workers' compensation retaliation is timing. He has no other direct or circumstantial evidence to support his claim. UPS, on the other hand, has presented evidence that he was terminated for having a serious accident while driving a UPS package car. While Pipes may disagree whether the reason for his termination is adequate under the CBA's language, he has presented no evidence that the reason was pretext for workers' compensation retaliation. Accordingly, UPS's Motion for Summary Judgment on this claim is also GRANTED.

D. Motion to Strike

Pipes also moved the Court to strike portions of the declaration of Jerry Gordanier. [Doc. No. 70]. To the extent that Pipes objected that Gordanier's statements in paragraph 3 of his declaration constituted "legal conclusions," the Court disagrees and finds that Gordanier could properly testify as to the factual nature of his role on the Deadlock Panel. Pipes's Motion to Strike is DENIED IN PART.

The remainder of Pipes's motion addresses Gordanier's interpretation of the CBA. Given the Court's conclusions in this matter, it has not

considered these statements, and, thus, the remaining portion of Pipes's Motion to Strike is DENIED AS MOOT.

III. CONCLUSION

For the foregoing reasons, Defendant International's Motion for Summary Judgment [Doc. No. 34] and Defendant UPS's Motion for Summary Judgment [Doc. No. 37] are GRANTED. Accordingly, Pipes's claims against all Defendants are DISMISSED WITH PREJUDICE.

Pipes's Motion to Strike [Doc. No. 70] is DENIED IN PART as to Gordanier's statements regarding his role on the Deadlock Panel, The remainder of the motion is DENIED AS MOOT.

MONROE, LOUISIANA, this 16 day of June, 2009.

/s/ Robert G. James
ROBERT G. JAMES
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JAMES R. PIPES	CIVIL ACTION NO. 3:07-CV-1762
VERSUS	
UNITED PARCEL SERVICE, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS	JUDGE ROBERT G. JAMES
	MAG. JUDGE KAREN L. HAYES

JUDGMENT

For the reasons set forth in this Court's Ruling,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment filed by Defendant International Brotherhood of Teamsters [Doc. No. 34] is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment filed by Defendant United Parcel Service, Inc. [Doc. No. 37] is GRANTED. Accordingly, Plaintiff James Pipes's claims against all Defendants are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Plaintiff James R. Pipes's Motion to Strike [Doc. No. 70] is DENIED IN PART as to Jerry Gordanier's statements in paragraph 3 of his declaration regarding his role on the Deadlock Panel. The remainder of the motion is DENIED AS MOOT.

MONROE, LOUISIANA, this 16 day of June, 2009.

/s/ Robert G. James
ROBERT G. JAMES
UNITED STATES
DISTRICT JUDGE

NATIONAL MASTER UNITED PARCEL SERVICE AGREEMENT and SOUTHERN REGION Supplemental Agreement

[International Brotherhood of Teamsters]

For the Period:
August 1, 2002 through July 31, 2008

* * *

ARTICLE 18. SAFETY AND HEALTH EQUIPMENT, ACCIDENTS AND REPORTS

Preamble

The Employer and the Union agree that the safety of the employees and the general public is of utmost importance.

The Employer and the Union have developed the following Sections and Subsections of this Agreement to respond to that mutual concern for safety. The contract language responds to a variety of areas related to safety, health, ergonomics, climatic conditions as well as federal, state and local laws dedicated to providing a safe and healthy workplace.

To address safety and health issues, the Employer and the Union have developed the following:

A. A National UPS/IBT Safety and Health Committee:

B. A National UPS/IBT Safety and Health Grievance Committee to respond to safety, health, ergonomic and climatic issues and concerns; and

C. A Safety and Health Committee, chaired by the UPS Director of Health and Safety and the IBT Director of Safety and Health, will be formed to address present and future safety and health solutions; and

D. Local area joint labor/management committees comprised of bargaining unit members and management to address job related safety and health concerns through the Comprehensive Health and Safety Process (CHSP).

Notwithstanding the employee's right to contact federal, state or local agencies, it is the recommendation of the committee that issues and concerns, regarding this Agreement, should first be brought before the National Safety and Health Committee.

Section 1. Employees' Rights – Equipment, Vehicles and Conditions

The Employer shall not require employees to take out on the streets or highways any vehicle, or use any type of equipment, that is not in a safe operating condition or equipped with the safety appliances prescribed by law. First line trailers will be swept on a daily basis. All package cars and tractors will be maintained in a clean and sanitary condition including mirrors and windows.

the car condition report or other form required by law. Any automotive/maintenance person consulted will be noted on this report.

When the occasion arises where an employee gives a written report on forms in use by the Employer of a vehicle/equipment being in unsafe working or operating condition and receives no consideration from the Employer, the employee shall take the matter up with an officer of the Union, who will take the matter up with the Employer. But in no event shall an employee be required to operate a vehicle/equipment that is unsafe or in violation of any federal, state or local, rules, regulations, standards or orders applicable to equipment or commercial motor vehicles.

Copies of the car-condition reports or Driver Vehicle Inspection Reports (DVIR) will be available in centers for review by drivers. Upon notification, drivers may make copies of said reports in facilities that have copy equipment. In facilities with no copy equipment, the employee will be provided a copy as soon as practical, when requested. In no case will the copy of the DVIR remain valid after the DOT retention requirement (ninety (90) days) or the original DVIR expires. The current DVIR will be maintained in each vehicle between completion of Preventative Maintenance Inspections (PMI). Other copies will be made available for review by drivers as required by the Federal Motor Carrier Safety Act (FMCS), 49 CFR 396, as applicable to the Employer.

Section 3. Accidents and Reports

Any employee involved in any accident shall immediately notify the Employer.

When required by the Employer, the employee, before the end of the employee's shift, shall complete a report of the accident including all available names and addresses of witnesses to the accident. The reference number will be given to the employee, and when requested, a copy of the accident report will be furnished to the employee within two (2) working days of such request. A copy of the accident report will also be furnished to the Local Union if requested by a Local Union official. In cases of equipment accidents where a Driver's Report of Accident form is completed, the employee will be given a copy of the form the same day, when requested. In facilities with no copy equipment the employee will be provided a copy as soon as practicable.

In the event of a vehicle accident, the Employer shall have twenty (20) days to complete its investigation, if warranted, and ten (10) days to take disciplinary action, if any, unless otherwise mutually agreed. Except for serious accidents, where the driver may be presumed to be at fault, a driver will not be removed from the payroll during an investigation of the accident.

A serious accident is defined as one in which:

1. There is a fatality, or;

2. A citation is issued and there is bodily injury to a person who, as a result of the injury, receives immediate medical treatment away from the scene of the accident, or;

3. A citation is issued and one or more motor vehicles incur disabling damage as a result of the accident requiring a vehicle to be transported away from the scene by a tow truck or other vehicle, or;

4. Any vehicular contact with an aircraft which results in damage that grounds such aircraft, or;

5. There is an accident involving a motor vehicle on Company property, outside of any building, that results in a fatality or bodily injury to a person, who as a result of the injury receives medical treatment away from the scene of the accident.

The driver will be entitled to non-driving work during this period at his/her normal rate of pay.

The Employer and the Union mutually agree that the employee's rights to Union representation will be protected pursuant to Article 4 of the National Master UPS Agreement.

Southern Region
of Teamsters
UNITED PARCEL SERVICE
Supplemental Agreement

For The Period
August 1, 2002
thru July 31, 2008

* * *

ARTICLE 52 – DISCHARGE OR SUSPENSION

(A) The Employer shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension shall give at least one (1) warning notice of a complaint against such employee to the employee, in writing, and a copy of the same to the Local Union, except that no warning notice need be given to an employee before discharge if the cause of such discharge is dishonesty, drinking of or under the influence of alcoholic beverage or narcotics, including hallucinogens while on duty, carrying or permitting the carrying of drugs or narcotics on his/her person, or equipment, that is prohibited by State or Federal Law (including meal period), recklessness resulting in a serious accident while on duty, an avoidable runaway accident, failure to report an accident, carrying of unauthorized passengers while on the job, or engaging in unprovoked physical violence on Company property or while on duty.

The warning notice as herein provided shall be given to the employee with a copy to the Union within ten (10) working days of said complaint or within ten (10)

working days of knowledge of said complaint and shall not remain in effect for a period of more than nine (9) months from date of said warning notice.

(B) Sobriety – Drug Test: The refusal to take a drug and/or alcohol test where there is reasonable cause to believe an employee is under the influence of either illegal drugs and/or alcohol may result in disciplinary action up to and including discharge.

(C) Discharge or suspension must be by proper written notice to the employee and Union affected. Any employee may request an investigation as to said discharge or suspension. Should such investigation prove that an injustice has been done an employee, the employee shall be reinstated. The S.R.A.P.G.C. and the impartial arbitrator shall have the authority to order full, partial, or no compensation for time lost. Appeals from discharge, suspension, or warning notice must be taken with ten (10) working days by written notice.

(D) Each employee has the right to examine his/her Center personnel files upon request on his/her own time and shall receive copies of any documents in their files upon request with the understanding that the employee is responsible for all administrative and copy expenses. The time spent to review the files will be mutually agreed upon.

Title 29, U.S.C. § 185. **Suits by and against labor organizations**

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

No. 09-30584

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES R. PIPES

Plaintiff-Appellant

VERSUS

UNITED PARCEL SERVICE, INC.
and INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Defendants-Appellees

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
Civil Action No. 3:07-cv-1762
Hon. Robert G. James,
District Court Judge Presiding

RECORD EXCERPTS ON BEHALF
OF DEFENDANT-APPELLEE,
UNITED PARCEL SERVICE, INC.
VOLUME – II

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DECISION: BASED ON THE FACTS PRESENTED IN THIS PARTICULAR CASE THE CLAIM OF THE UNION IS DENIED.